



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MRA/168724

PRELIMINARY RECITALS

Pursuant to a petition filed September 16, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on October 13, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's patient liability and the spousal allocation.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kelly Voss

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. On July 10, 2015, the agency received an Institutional MA application for the Petitioner, with a backdate request to the Petitioner's date of institutionalization in April, 2015. TV is the Petitioner's community spouse.
3. Petitioner has income from Social Security Retirement of \$2,060/month. TV has earned income of \$2,238.40/month. TV's earned income will end in January, 2016.
4. On August 20, 2015, the agency issued a Notice of Decision to the Petitioner informing him that his application for Institutional MA was approved with a monthly patient liability cost of \$1,272.90. Income allocated to the community spouse was determined to be \$742.10/month.
5. Subsequent to the hearing, I take notice that TV was notified that effective January, 2016 her only income will be \$1,375.30 (gross) from Social Security. TV notified the agency which updated the Petitioner's case. On November 25, 2015, a Notice of Decision was issued informing the Petitioner that effective January 1, 2016, his monthly patient liability will be \$304.50.

6. TV's monthly expenses are detailed below:

Mortgage	\$874.61
Condo Assoc. fees	\$150.00
Homeowners insurance	\$ 51.06
Car insurance	\$ 50.92
WE Energies	\$178.00
Water	\$ 27.32
AT & T (TV/Internet/phone)	\$163.38
Time Warner Cable	\$ 74.91
Life Alert	\$ 20.00
ADT Security	\$ 34.67
Life insurance premiums	\$117.89
AAA	\$ 7.33
Norton	\$ 12.01
Groceries	\$400.00
Gas	\$100.00
Medications	\$ 4.00
Health insurance	\$168.85
Medicare	\$104.90
Dental insurance	\$ 38.60
Clothing	\$ 50.00
Home maintenance	\$150.00
Cat food/care	\$120.00
Credit card	\$355.00

Total monthly expenses noted above for TV are \$3,253.45.

7. On September 16, 2015, an appeal was filed on behalf of the Petitioner.

DISCUSSION

Wis. Stat. § 49.455 is the Wisconsin codification of 42 U.S.C. §13964-5 (MCCA). Among other things, the "spousal impoverishment" provisions at Wis. Stat. § 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. That allowance set by the agency is \$2,980.50 per month, as directed by MA policy. See, Medicaid Eligibility Handbook, Appendix 18.6.2. The institutionalized person may divert some of her income to the community spouse rather than contributing to her own cost of care. The amount of the diverted income, when combined with the spouse's income, cannot exceed the maximum allowance determined by the agency. Any income of the institutionalized spouse that is not allocated to the community spouse or the personal needs allowance must be paid to the nursing home as the institutionalized person's cost of care share.

An administrative law judge (ALJ) can grant an exception to this limit on income diversion. The ALJ may increase the income allowance following a fair hearing. The ALJ does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. The relevant statutory provision states that the test for exception is as follows:

- (c) If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse monthly income allowance under sub. (4)(b).

Wis. Stat. § 49.455(8)(c). Thus an ALJ may augment the maximum allocation ceiling only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs. The MA Eligibility Handbook states that a court or fair hearing can increase the community spouse income allocation if it determines the spouse is not able to provide for his/her necessary and basic maintenance needs with the amount allocated. MA Handbook, § 18.6.2.

Based on this criteria I have reviewed the expenses noted at Finding # 6 and have the following adjustments to make:

- With regard to the Petitioner's AT & T bill and Time Warner bill, in accordance with previous DHA decisions, cable TV is not considered a basic and necessary expense. I will, however, allow the phone expense and internet expense. I find that internet expense is necessary because of internet banking and bill pay that occur. The evidence submitted by the Petitioner indicates that internet expense is \$47.30/month and phone expense is \$42.28/month. Therefore, I will allow \$89.58/month for the phone and internet expense.
- I do not find the following to be basic and necessary expenses: ADT Security, AAA, Norton, cat food/care.

Based on allowable monthly expenses for TV of \$2930.73, I conclude that for the period of April – December, 2015, the Petitioner has not demonstrated that she required any additional spousal allocation over the \$742.10 determined by the agency. However, with her reduced income effective January 1, 2016 and with allowable monthly expenses of \$2930.73, the agency should allocate \$1,555.43 of Petitioner's income to TV. If TV's circumstances change at any time, she can request further review of the spousal allocation.

CONCLUSIONS OF LAW

Petitioner has not demonstrated that any additional community spouse income allocation is warranted for the period of April – December, 2015. Petitioner has demonstrated that, effective January 1, 2016, a community spouse income allocation of \$1,555.43/month from his income to TV is warranted.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to add a spousal allocation of \$1,555.43 effective January 1, 2016. The Petitioner's patient liability should be adjusted accordingly. The agency must take these steps within 10 days of the date of this Order.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of December, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 4, 2015.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability